



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



370618

REPLY TO THE ATTENTION OF:

AUG 18 2010

SE-5J

United Parcel Service Express

Robert M. Callero
Callero & Callero LLP
7800 Milwaukee Avenue
Niles, Illinois 60714

RE: Bautsch-Gray Mine Site, Site ID # B5TS
Request for Information

Dear Mr. Callero:

The United States Environmental Protection Agency (EPA) is in receipt of your letter of August 16, 2010 and your previous letter of August 10, 2010. EPA is in the process of verifying the assertions made concerning the Kenneth L. Johnston Trust (Trust). If they are correct, then the Trust will likely not be considered a viable and liable Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Potentially Responsible Party (PRP), and EPA will issue you a written statement that we will not be enforcing the August 10, 2010 UAO against the Trust (and copy the other named UAO Respondents). At this time, you have not been named personally as a PRP.

This letter seeks your cooperation in providing the information and documents relating to the contamination of the Bautsch-Gray Mine Superfund Site (Site) in Jo Daviess County, Illinois. A Superfund site is a site contaminated with high levels of hazardous substances that may present a threat to human health or the environment. If you have documentation that supports the assertions made in your August 10, 2010 letter to EPA, please provide a copy of any and all documents showing the closing of the Kenneth L. Johnston Trust, and its current status. This would aid EPA in verifying the assertions that you have made on behalf of the Kenneth L. Johnston Trust, and achieving resolution of this matter.

We encourage you to give this matter your immediate attention and request that you provide a complete and truthful response to this Information Request and attached questions (Attachment B) within three (3) days of your receipt of this letter.

The United States Environmental Protection Agency is investigating the release or threat of release of hazardous substances, pollutants, or contaminants at the Site. EPA is seeking to obtain information concerning the generation, storage, treatment, transportation, and methods

used to dispose of such substances that have been, or threaten to be, released from the Site. EPA will study the effects of these substances on the environment and public health. In addition, EPA will identify activities, materials, and parties that contributed to contamination at the Site. EPA believes that you might have information which may assist the Agency in its investigation of the Site.

Description of Legal Authority

The federal "Superfund" law (the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., commonly referred to as "CERCLA" and "Superfund") gives EPA the authority to, among other things: (1) assess contaminated sites, (2) determine the threats to human health and the environment posed by each site, and (3) clean up those sites in the order of the relative threats posed by each.

Information Request

Under Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), EPA has broad information gathering authority which allows EPA to require persons to furnish information or documents relating to:

- a) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.
- b) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.
- c) Information relating to the ability of a person to pay for or to perform a cleanup.

While EPA seeks your cooperation in this investigation, compliance with the Information Request is required by law. Please note that false, fictitious, or fraudulent statements or representations may subject you to civil or criminal penalties under federal law.

Some of the information EPA is requesting may be considered by you to be confidential. Please be aware that you may not withhold the information upon that basis. If you wish EPA to treat the information confidentially, you must advise EPA of that fact by following the procedures outlined in Attachment A, including the requirement for supporting your claim for confidentiality.

If you have information about other parties who may have information which may assist the Agency in its investigation of the Site or may be responsible for the contamination at the Site, that information should be submitted within the time frame noted above.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 et seq.

Instructions on how to respond to the questions in Attachment B to this document are described in Attachment A. Your response to this Information Request should be mailed to:

U.S. Environmental Protection Agency
Carol Ropski
Enforcement Services Section #1, SE-5J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

If you have further questions or concerns or wish to hold a conference, feel free to contact Tom Turner, Associate Regional Counsel, at 312/886-6613 or by email: turner.thomas@epa.gov.

We appreciate and look forward to your prompt response to this Information Request.

Sincerely,

A handwritten signature in black ink, appearing to read "William D. Messenger for".

William D. Messenger, Chief
Enforcement Services Section #1

Enclosures

Attachment A
Information Request
to Callero & Callero LLP

Instructions

1. Answer Every Question Completely. A separate response must be made to each of the questions set forth in this Information Request. For each question contained in this letter, if information responsive to this Information Request is not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
2. Number Each Answer. Precede each answer with the corresponding number of the question and the subpart to which it responds.
3. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered non-compliance with this Information Request.
4. Identify Sources of Answer. For each question, identify (see Definitions) all the persons and documents that you relied on in producing your answer.
5. Continuing Obligation to Provide/Correct Information. If additional information or documents responsive to this Request become known or available to you after you respond to this Request, EPA hereby requests pursuant to Section 104(e) of CERCLA that you supplement your response to EPA.
6. Confidential Information. The information requested herein must be provided even though you may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. §§ 9604(e)(7)(E) and (F), and Section 3007(b) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6927(b), and 40 C.F.R. § 2.203(b).

If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim. For each document or response you claim confidential, you must separately address the following points:

- a) the portions of the information alleged to be entitled to confidential treatment;
- b) the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);

- c) measures taken by you to guard against the undesired disclosure of the information to others;
- d) the extent to which the information has been disclosed to others; and the precautions taken in connection therewith;
- e) pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and
- f) whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

To make a confidentiality claim, please stamp or type "confidential" on all confidential responses and any related confidential documents. Confidential portions of otherwise non-confidential documents should be clearly identified. You should indicate a date, if any, after which the information need no longer be treated as confidential. Please submit your response so that all non-confidential information, including any redacted versions of documents, is in one envelope and all materials for which you desire confidential treatment are in another envelope.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent. Information covered by such claim will be disclosed by EPA only to the extent permitted by Section 104(e) of CERCLA. If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice to you.

7. Disclosure to EPA Contractor. Information which you submit in response to this Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 C.F.R. § 2.310(h), even if you assert that all or part of it is confidential business information. Please be advised that EPA may disclose all responses to this Information Request to one or more of its private contractors for the purpose of organizing and/or analyzing the information contained in the responses to this Information Request. If you are submitting information which you assert is entitled to treatment as confidential business information, you may comment on this intended disclosure within fourteen days of receiving this Information Request.

8. Personal Privacy Information. Personnel and medical files, and similar files, the disclosure of which to the general public may constitute an invasion of privacy, should be segregated from your responses, included on separate sheet(s), and marked as "Personal Privacy Information."

9. Objections to Questions. If you have objections to some or all the questions within the Information Request letter, you are still required to respond to each of the questions.

Definitions

The following definitions shall apply to the following words as they appear in this Information Request.

1. The term "**documents**" includes any written, recorded, computer-generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control, or known by you to exist, including originals, all prior drafts, and all non-identical copies.
2. The term "**real estate**" shall mean and include, but not be limited to the following: land, buildings, a house, dwelling place, condominium, cooperative apartment, office or commercial building, including those located outside the United States.
3. The term "**Site**" shall mean the **Bautsch-Gray Mine** Superfund Site located in Jo Daviess, County, Illinois.
4. The term "**you**" or "**Respondent**" shall mean Mr. Robert M. Callero, Callero & Callero LLP, and/or any current or previous Trustee, Executor or Beneficiary of the Kenneth L. Johnston Trust.

Attachment B
Requests

1) Provide copies of any and all documents that support the assertion made in your August 10, 2010 reply to the EPA General Notice Letter. Specifically, provide copies of all documents in support of and/or related to your assertion that the Kenneth L. Johnston Trust is not liable or viable as a party at this Site.

2) Provide copies of any and all documentation concerning the current ownership of the Kenneth L. Johnston Trust property described in the EPA letter of August 5, 2010, and the EPA UAO of August 10, 2010, as well as any information related to real estate tax payments made on the property between 2000 and the present.